

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai'i**

File No.: HA-3302
180-Day Exp. Date: September 10, 2006

August 25, 2006

**Board of Land and
Natural Resources
State of Hawai'i
Honolulu, Hawai'i**

REGARDING: Conservation District Use Application (CDUA) HA-3302
Consolidation and Re-subdivision

APPLICANT: Killeen Family Trust
Gary and Caroline Killeen, Trustees
87-288 Ka'ohe Road
Captain Cook, HI 96704

LANDOWNER: Killeen Family Trust

LOCATION: Ka'ohe, South Kona, Hawai'i

TMK: (3) 8-7-19:34, 35, 36, 37

AREA OF PARCEL: 35,114 square feet

AREA OF USE: same

SUBZONE: Limited

DESCRIPTION OF AREA/CURRENT USE:

The subject property is located on the southwestern coast of the island of Hawai'i in the Ka'ohe ahupua'a in the South Kona District. The three makai subject parcels, TMKs (3) 8-7-19:35, 36, and 37 are located entirely in the Limited Subzone of the State Land Use Conservation District. The easternmost mauka parcel, TMK (3) 8-7-19:34 is partially in the Agricultural District. The County records are unclear as to what percentage of Lot 34 lies within the Conservation District and what percentage lies within Agriculture.

The four parcels total 35,114 square feet in area, and lie on the makai end of the Kona paradise Subdivision on the south western coast of Hawai'i (see **Exhibit 1**). The lots are

bounded by Ka'ohe Park and 'Ili'ili Beach (a.k.a. Pebble Beach) to the west, Ka'ohe road to the north, Mapuna Road South to the east, and another parcel to the south.

The subdivision itself is mauka of Pebble Beach, which was formed during the 1950 Mauna Loa lava flow. OCCL records do not indicate that there is a certified shoreline for the parcel. The rest of the area consists of a'a lava from flows dating between 1500 and 3000 years ago. There is minimal surface soil.

Flora and fauna are minimal. An April 2003 biological resource survey showed only four species of plants: Christmas berry (*Schinus terebinthifolus*), koa haole (*Leucana leucocephala*), leaf-of-life (*Kalanchoe pinnata*), and 'uhaloa (*Waltheria indica*). Only the last is native, and it is common in the South Kona district. On site fauna were all alien, including the mongoose, Norway rats, as well as a small number of introduced bird species. No endangered or threatened species are known to inhabit the site.

There are no aquatic features on the site. Offshore waters contain a healthy coral reef ecosystem.

The entire subject property was graded in the 1950's when the subdivision was developed. Current infrastructure includes a CRM wall between the property and the Park, a stonewall and a hog wire fence along the southern perimeter, and a two-story house with a concrete driveway and rock landscaping on the lot second from the beach (see **Exhibit 2**).

There are no known archaeological features at the site.

Exhibits 3 and 4 show photographs of the parcels.

PROPOSED USE:

The applicants are proposing to consolidate the four lots and subdivide them into three lots of 10,025 square feet (Lot 326-A), 12,675 square feet (Lot 325-A), and 12,414 square feet (Lot 324-A). The proposed Lot 325-A will hold the existing single-family residence. This house was permitted under Conservation District Use Permit (CDUP) HA-2321.

The lots were created in the 1950's as part of the Kona Paradise Subdivision. Three were less than 10,000 square feet, and as such did not meet the minimum lot size for building a single-family residence when the Conservation District was formed in 1964. The application will create three lots where each meets the minimum size requirement.

No development is being proposed in this application.

SUMMARY OF COMMENTS:

The Office of Conservation and Coastal Lands referred the application to the following agencies for review and comment: Office of Hawaiian Affairs; the Hawai'i County Planning Department; Hawai'i Board Member; and Department of Land and Natural Resources (DLNR) Land Division & Historic Preservation Division. A notice of the application was placed in the Office of Environmental Quality Control's *Environmental Notice* on April 8, 2006. In addition, a copy was available for review at the Kailua-Kona Public Library.

Comments were received from the following agencies:

DLNR Land Division

No comment

Office of Hawaiian Affairs

No comments

County of Hawai'i Planning Department

The proposed consolidation and re-subdivision is exempt from the definition of development, and a Special Management Area permit will not be needed. The Department notes that this does not apply to any construction activities that may be required before subdivision, and it does not cover any land altering activities or construction activities that might occur on the two vacant lots.

ANALYSIS:

Following review and acceptance for processing, the Applicant's Agent was notified, by letter dated March 17, 2006, that:

1. The consolidation and re-subdivision was an identified land use within the Conservation District, pursuant to Hawai'i Administrative Rules (HAR) §13-5-24 *Identified land uses in the protective subzone, P-11 SUBDIVISION OR CONSOLIDATION OF PROPERTY, (C-2) Consolidation of property into a lesser number of legal lots of record currently existing and approved, which furthers the objectives of the subzone. Consolidation followed by a subdivision shall constitute a subdivision.* The final decision as to whether to grant or deny the permits lies with the Chair of the DLNR.
2. Pursuant to HAR §13-5-40 *Hearings*, a public hearing was not be required.
3. This project was exempt from conducting an Environmental Assessment pursuant to HAR §11-200-8.

§13-5-30 CRITERIA:

The following discussion evaluates the merits of the proposed land use by applying the criteria established in HAR §13-5-30.

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

The proposed consolidation and subdivision does not entail any new land use, and does not conflict with these objectives.

- 2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

The objective of the Limited subzone is to limit uses where natural conditions suggest limits on human activities.

Staff is of the opinion that any increase in density within the Limited Subzone seaward of the existing structures in the Kona Paradise subdivision should be discouraged. The consolidation and re-subdivision will not result in a change in land use, and any future and use activities will still require a CDUA.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

The Hawai'i County Planning Department has determined that the proposal is exempt from the definition of development, and will not need a Special Management Area permit.

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

The consolidation and re-subdivision does not involve a land use.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

The consolidation and re-subdivision does not involve a land use.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

The action shall have no physical impact on the land. Therefore staff is of the opinion that the natural beauty and open space characteristics of the portions of the lots within the Conservation District will be maintained.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The consolidation and re-subdivision is designed to create parcels that will meet the 10,000 square-foot minimum lot size for single-family residences. None of the three vacant parcels currently meet the minimum required lot size. It is unclear whether Lot 34 lies more within the Agriculture or more within the Conservation District, and thus OCCL cannot determine if it is a buildable lot or not.

The proposal would result in three lots, one that is already developed and two that are vacant. The two vacant lots would meet the minimum required lot size of 10,000 square-feet. As there is no certified shoreline for the makai lot OCCL cannot state whether this lot would become buildable.

In summary, the current property lines result in one developed lot, one that is potentially buildable, and two that are not.

The proposal would result in one developed lot, and two that are potentially buildable.

While the proposal could potentially lead to an increased intensity of land use, OCCL finds that there are mitigating factors that will be discussed in the next section.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

Staff is of the opinion that the proposed subdivision will not be materially detrimental to the public health, safety and welfare.

DISCUSSION:

The applicants are proposing to consolidate and re-subdivide Conservation District land from four lots into three. The average size of each existing lot is 8,778 square feet. The proposed new lots would be 10,025 ft², 12,675 ft², and 12,414 ft² respectively.

There is currently one house on the property. The other three lots are vacant. The three vacant lots do not meet the minimum size requirements for building a single-family residence in the Conservation District.

The neighborhood was developed in 1950, prior to the area's inclusion in the Conservation District. Many of the parcels mauka of the subject parcel – which lie

outside the Conservation District boundaries – have already been developed as residences and vacation homes. **Exhibit 5** is an aerial shot of the neighborhood.

The parcels in question were grubbed, graded, and landscaped at the time the neighborhood was developed. A CRM wall bounds part of the makai lot. **Exhibit 6** shows the mauka and makai portions of the properties.

The proposal would result in three lots, each meeting the minimum size requirements for building a single-family residence in the Conservation District. The makai lot would still need a certified shoreline survey to determine if it was developable or not.

The proposal thus has the potential to increase the intensity of land use. OCCL staff finds that this increase is mitigated by two factors. The first is that the parcels were landscaped prior to their inclusion in the Conservation District. Their natural character has been lost. As the neighboring parcels have already been developed with residences and vacation homes; any potential future development of the subject lots would remain in character with the existing community.

The second mitigating factor is that the applicant has the option of requesting a rule amendment for a variance on minimum lot size. If this were successful then it would create up to four developable lots. Permitting the current proposal would create up to three developable lots. In this scenario the proposal would result in a decrease in the intensity of land use.

Because the proposal could lead to an increase in land use under the current conditions, OCCL is of the opinion that this application should go before the Board of Land and Natural Resources rather than the Chair, pursuant to HAR §13-5-33 DEPARTMENTAL PERMITS (j) *a board permit shall be required when the chairperson determines that the scope of the proposed use ... requires a board permit.*

Staff has concerns regarding the potential development of the most seaward lot. The proposed action would provide an opportunity for the landowner to apply for a CDUA, but staff is concerned about the proximity to the shoreline and the potential for future erosion or flooding damages should this lot be developed. While staff has no objection to the present proposal, the applicant should understand that land use in the Limited Subzone is restrictive and any future action to build a single-family residence is subject to Conservation District Use Application and shoreline change analysis.

RECOMMENDATION:

Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources APPROVE this application subject to the following conditions:

- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;

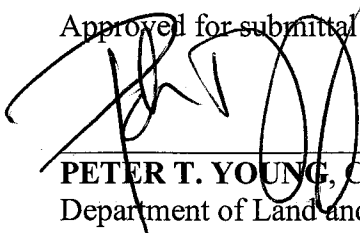
- 2) The applicant, its successors and assigns, shall indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) The applicant shall provide documentation (e.g. book and page or document number) that this permit approval has been placed in recordable form as a part of each deed instrument;
- 4) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- 5) The applicant understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
- 6) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
- 7) The applicant shall obtain the approval of the County of Hawai'i for the consolidation and resubdivision through the applicable County department;
- 8) Other terms and conditions as may be prescribed by the Chairperson; and
- 9) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,



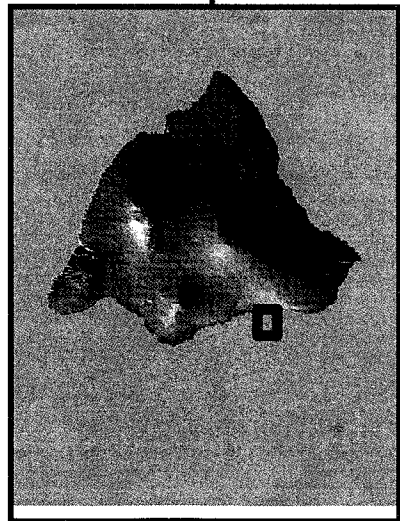
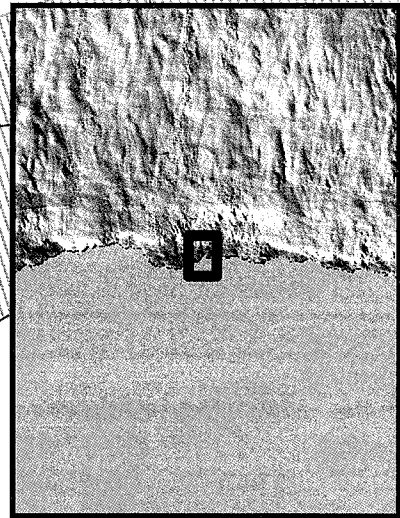
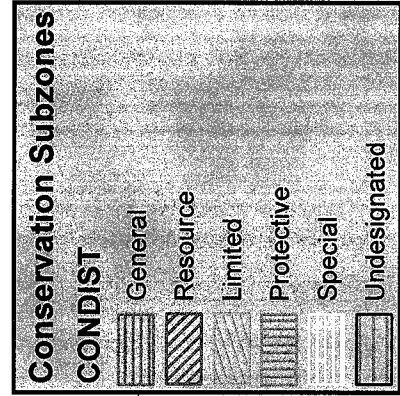
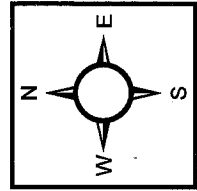
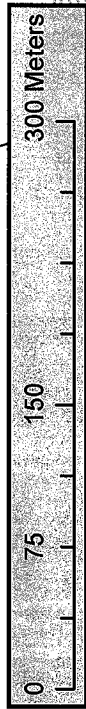
Michael Cain, Staff Planner
Office of Conservation and Coastal Lands

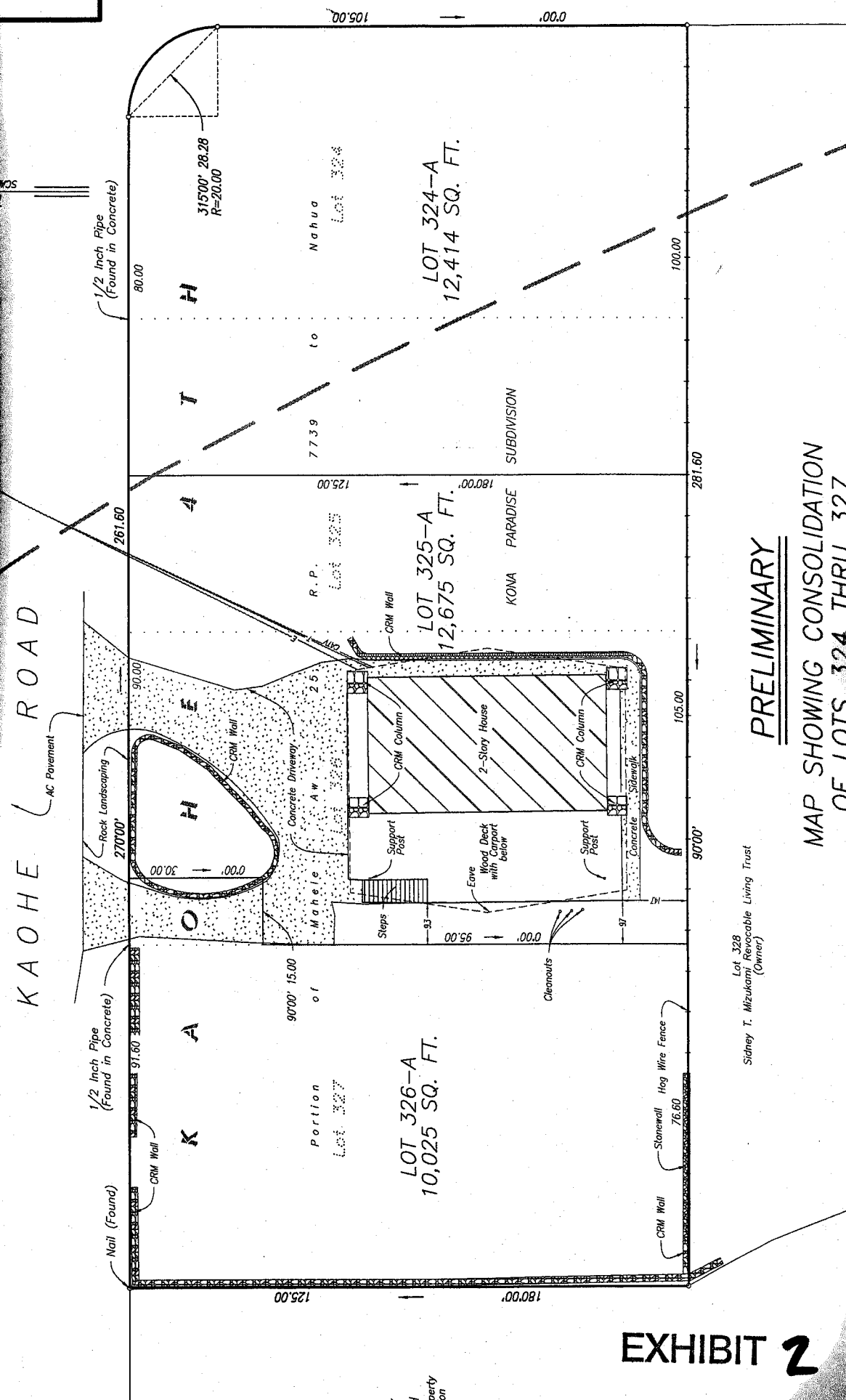
Approved for submittal:



PETER T. YOUNG, Chairperson
Department of Land and Natural Resources

EXHIBIT 1





PRELIMINARY

MAP SHOWING CONSOLIDATION
OF LOTS 324 THRU 327
OF KONA PARADISE SUBDIVISION

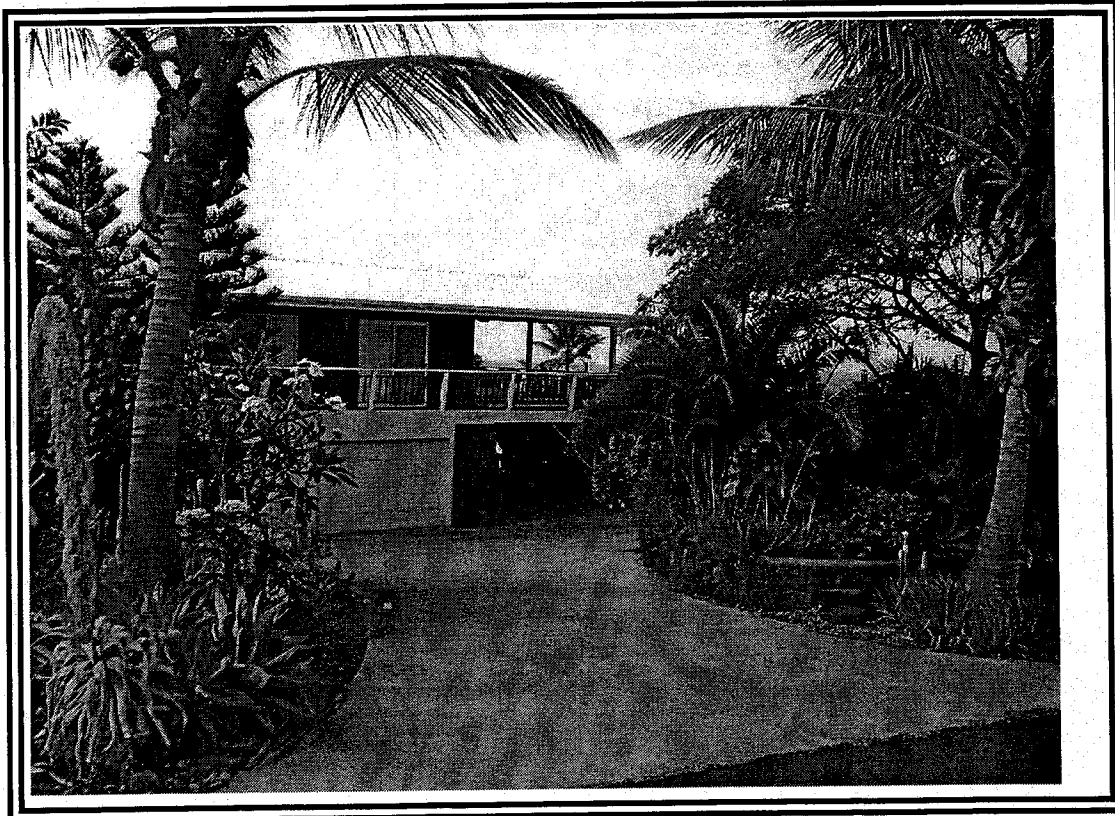
Lot 328
Sidney T. Mizukami Revocable Living Trust
(Owner)

EXHIBIT 2

SITE PHOTOGRAPHS



Subject property from Kaohe Road looking southwest.

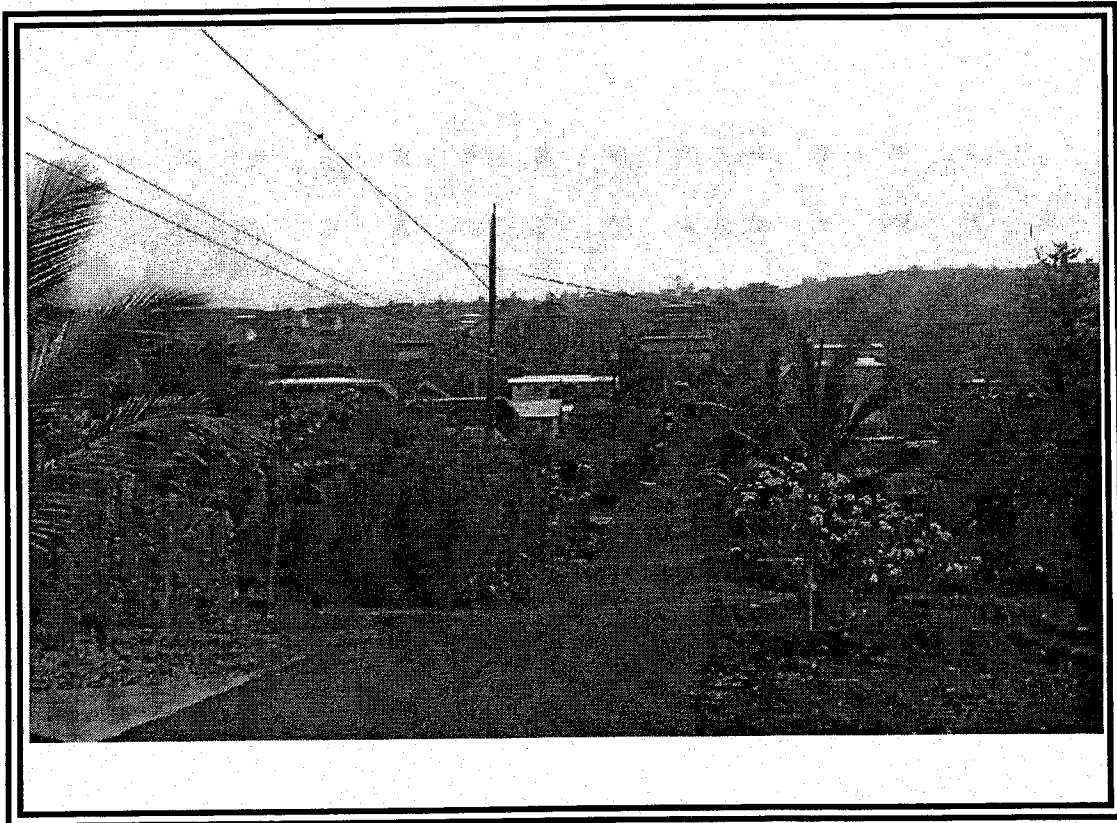


Single family dwelling on Lot 235_A from Kaohe Road looking southwest.

SITE PHOTOGRAPHS



Lot 326-A from shoreline looking southwest.



Kaohe Road looking east with subject property on right.



Mauka Lots



Makai Lots



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Kono Paradise

PROJECT
AREA

EXHIBIT 6